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FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
02/11/2004	Donald Brucker	14091-016001	3355	
590 06/27/2006		EXAM	EXAMINER	
FISH & RICHARDSON, PC		MELLER, MICHAEL V		
2 (S. MAN, 65440, 1022		ARTINIT	PAPER NUMBER	
MINNEAPOLIS, MIN 33440-1022			THE INTOMOLIA	
2	02/11/2004 590 06/27/2006 HARDSON, PC	02/11/2004 Donald Brucker 590 06/27/2006 HARDSON, PC	02/11/2004 Donald Brucker 14091-016001 590 06/27/2006 EXAM HARDSON, PC MELLER, M	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application	n No.	Applicant(s)			
Office Action Summary		10/777,99	3	BRUCKER, DONALD			
		Examiner		Art Unit			
		Michael V.		1655			
Period fo	The MAILING DATE of this commun r Reply	ication appears on the	cover sheet with the c	orrespondence ac	idress		
WHIC - Exter after - If NO - Failu Any r	ORTENED STATUTORY PERIOD F CHEVER IS LONGER, FROM THE M sions of time may be available under the provisions SIX (6) MONTHS from the mailing date of this comn period for reply is specified above, the maximum st re to reply within the set or extended period for reply reply received by the Office later than three months a red patent term adjustment. See 37 CFR 1.704(b).	IAILING DATE OF TH of 37 CFR 1.136(a). In no even nunication. atutory period will apply and wi will, by statute, cause the appl	IIS COMMUNICATION int, however, may a reply be time the spire SIX (6) MONTHS from the ication to become ABANDONE	N. nely filed the mailing date of this c D (35 U.S.C. § 133).			
Status							
1)	Responsive to communication(s) file	ed on					
2a)□	This action is FINAL.	2b)⊡ This action is n					
3)□	Since this application is in condition	for allowance except	for formal matters, pro	secution as to the	e merits is		
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Dispositi	on of Claims						
4)⊠	4)⊠ Claim(s) <u>1-29</u> is/are pending in the application.						
-	4a) Of the above claim(s) is/are withdrawn from consideration.						
5)	Claim(s) is/are allowed.						
6)□	6) Claim(s) is/are rejected.						
-	Claim(s) is/are objected to.	•	•				
8) Claim(s) 1-29 are subject to restriction and/or election requirement.							
Applicati	on Papers						
9)[The specification is objected to by th	e Examiner.					
10)	The drawing(s) filed on is/are	: a) accepted or b)	\square objected to by the $!$	Examiner.			
	Applicant may not request that any obje	ction to the drawing(s) b	e held in abeyance. See	e 37 CFR 1.85(a).			
	Replacement drawing sheet(s) including						
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
Priority u	ınder 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
a) All b) Some * c) None of:							
	1. Certified copies of the priority documents have been received.						
	2. Certified copies of the priority documents have been received in Application No						
	3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).						
* 0	• •	·		ad.			
* See the attached detailed Office action for a list of the certified copies not received.							
Attachmen							
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date							
3) Infon	re of Dransperson's Patent Drawing Review (r mation Disclosure Statement(s) (PTO-1449 or r No(s)/Mail Date		5) Notice of Informal F 6) Other:		O-152)		

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, 26-28, drawn to a composition, nasal spray and sublingual spray, classified in class 424, subclass various.
- II. Claim 13, drawn to a first method of using the composition, classified in class 435, subclass various.
- III. Claims 14-25, 29, drawn to a second method of using the claimed composition, classified in class 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

The inventions II and III are not related since they are different methods of use which have different modes of operation and different effects and are not capable of being used together.

Inventions I and II,III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially distinct process such as treating wounds and as evidenced by the claims themselves.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species: the many different components in the compositions. The species are independent or distinct because each of the components in the compositions defines a distinct invention which has distinct properties and functions.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 14, are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-

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0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael V. Meller Primary Examiner Art Unit 1655

MVM